



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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OAG 17-014

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Subject: Whether the City of Burgin is required to have a city attorney, and if so, whether it must provide a line item in the budget for the city attorney's compensation and what may be done if city council refuses to approve line item; what procedures must be followed when hiring a city attorney; what may be done if city council does not approve a mayor's appointment of city attorney.

Requested by: Wanda Dry, Burgin City Attorney

Written by: Taylor Payne, Assistant Attorney General

Syllabus: The City of Burgin is not required to establish the office of city attorney. If it does so, it must follow the procedures set forth in KRS 83A.080. The City may establish compensation for the city attorney by ordinance.

Statutes construed: KRS 83A.080; KRS 82.082; KRS 83A.130.

OAGs cited: OAG 81-403.

Opinion of the Attorney General

Wanda Dry, the interim city attorney for the City of Burgin, has requested an opinion from this office on behalf of the Mayor of Burgin, George Hensley, ("Mayor") regarding the office of city attorney and the respective roles of the Mayor and the Burgin City Council ("City Council") to appoint a city attorney and establish compensation for the office. In particular, Ms. Dry asks: (1) whether the City of Burgin is required to have a city attorney, and if so, whether the city budget must include a line item to cover the city attorney's fees and what should

be done if the City Council refuses to approve such a line item; (2) what procedures should be followed to hire a city attorney; and (3) what may be done in the event the Mayor appoints a city attorney that the City Council fails to approve. We advise that the City of Burgin is not required to have a city attorney. We further advise that if the City of Burgin were to establish the office of city attorney, it must follow the procedures set forth in KRS 83A.080, for non-elected city officials. The City Council has the authority to set the compensation for the city attorney by ordinance. We decline to render an opinion as to what may be done if the City Council refused to approve an appointment to the office of city attorney by the Mayor in accordance with 40 KAR 1:020, Section 4. We have attached OAG 81-403, which addresses the office of city attorney and various alternatives a city may consider.

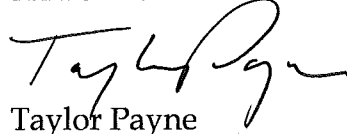
In OAG 81-403, this office noted that “[f]ollowing the repeal of those statutes governing the appointment or employment of city attorneys . . . by the 1980 legislature, the city legislative body is now empowered to establish the office of city attorney or provide for the employment of an attorney pursuant to an appropriate ordinance.” In particular, KRS 83A.080 empowers the legislative body of a city to establish the office of city attorney and the procedures it must follow when doing so. The power is discretionary; it does not require a city to create an office of city attorney. KRS 83A.080(1) permits a city to create the office of city attorney by ordinance, which must specify the title of office, powers and duties of office, oath of office, and a bond, if required. It may also establish the compensation for the office of city attorney. *See* OAG 81-403. KRS 83A.080(3) states that “[a]ll nonelected officers shall be appointed by the executive authority of the city and, except in cities of the first class, all these appointments shall be with approval of the city legislative body if separate from executive authority.

In the alternative to establishing the office of city attorney, the legislative body of a city has the power under its home rule authority, found at KRS 82.082, to “establish the position as a form of employment and fix the compensation.” OAG 81-403. Pursuant to KRS 83A.130(9), if the position of city attorney is established as a form of employment, the mayor has the authority to hire the attorney to employment for the city without the consent of the city’s legislative body. *See* OAG 81-403.

As another alternative to establishing the office of city attorney, the legislative body of a city, pursuant to its home rule authority, may "authorize the execution of a personal service contract to employ the services of an attorney on an hourly basis . . ." *Id.* Once the personal service contract "is authorized and funds appropriated, then the mayor would have the authority to execute the contract on behalf of the city legislative body under the terms of KRS 83A.130(8)." *Id.*

The City of Burgin is a city of the fifth class operating under the mayor-council plan form of government. Under this form of government, the City Council is the legislative body and the Mayor is the executive. KRS 83A.130(2). We advise that the City of Burgin is not required to establish the office of city attorney. If the City Council elected to do so, it must do so by an ordinance setting forth the title, the powers and duties, and the oath of the office. By ordinance, the City Council may also set forth the compensation afforded to the city attorney.¹ Upon creation of the office of city attorney, the Mayor has the authority to appoint someone to the office, subject to the approval of the City Council. If the City Council desires not to establish the office of city attorney, it may find legal representation for the city pursuant to its home rule authority and in accordance with the mayor-council plan of government provided in KRS 83A.130. We decline to advise as to what may be done if the City Council does not approve the Mayor's appointment to the office of city attorney as that would require an opinion of this office in response to a hypothetical question. *See* 40 KAR 1:020, Section 4 (stating that the Attorney General will not provide official opinions in response to hypothetical questions).

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ATTORNEY GENERAL



Taylor Payne
Assistant Attorney General

¹ Seeing as the City Council sets the compensation of the City Attorney by Ordinance, we see no reason to discuss the possibility of the City Council failing to approve a line item in the annual budget to pay the city attorney's compensation. Furthermore, to address such a question would require this office to address a hypothetical factual scenario, which we will not do pursuant to 40 KAR 1:020, Section 4.

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